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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,028	06/27/2003	Rick Martins		8478

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/609,028

Applicant(s)

MARTINS, RICK

Examiner

Jennifer E. Novosad

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003 and 25 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 9-15 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restriction

Applicant's election of group I, i.e., claim 1-8, in the reply filed on October 25, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). *Accordingly*, claims 9-15 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable linking claim.

Abstract

Applicant is reminded of the proper language and format for an abstract of the disclosure. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc., as in line 1.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The recitation "pegboard-like portion" in line 6 of claim 1 renders the claim indefinite since it is unclear whether the structure of the portion is "like" a pegboard or not. *To correct this*, it is suggested that "-like" be deleted.

Claim 8 is rendered indefinite since the structural relationship between the elements, i.e., "the first and second U-shaped members enclose first and second gaps" (see line 3), is unclear. In particular, it is noted that it is unclear whether the first and second gaps are enclosed "between" the U-shaped members, or whether "each" U-shaped member encloses one gap, or two gaps, etc. Further, it is noted in view of the drawings, particularly Figure 1B, that there is no structure shown that is considered to be "enclosed". Note 34 and 36 are open at both ends and would only be "enclosed" when top and bottom elements are connected to the U-shaped members.

Claim 8 is further rendered indefinite since it is unclear from the recitation "can fit" (in lines 7-8) whether the claim is *positively* requiring that the portions of the brackets fit into the gaps or whether the claim is *functionally* reciting this connection. *To correct this*, for example, if it is applicant's intent to *functionally* link these elements, it is suggested that "can fit" be changed to --are adapted to fit--.

Claim 8 recites the limitation "the first and second U-shaped brackets" in the last line. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,119,875 (Smith '875).

Smith '875 discloses an apparatus comprising a first U-shaped member (72) comprised of an outer portion (unnumbered - portion perpendicular to 72 on the right side thereof) and an inner portion (unnumbered - portion perpendicular to 72 on the left side thereof) which are substantially parallel to each other whereby the outer portion has a first and second slot (at top and bottom ends thereof - see Figure 4); a second U-shaped member (74) comprised of an outer portion and an inner portion that are parallel to each other whereby the outer portion of the second member has a slot; a pegboard (54) integrated (i.e., once assembled) to the inner portions (though element 70) of the first and second U-shaped members (72, 74); a top member (66) having a first end connected, i.e., when assembled (as in Figure 1) the ends of the top member (66) are *connected* to the members (72, 74) when the ends touch the top edges of 72, 74, to the first member (72) and a second end connected to the second member (74); the top member (66) has an edge (see Figure 3) with a slot (unnumbered) in the edge thereof; a bottom member (80) having a first end (between 76 and 82) connected to the first U-shaped member (72) and a second end (between 76 and 84) connected to the second U-shaped member (74).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,675,978 (Shea '978).

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Shea '978 discloses an apparatus comprising a first U-shaped member (52 - see Figure 3) comprised of an outer portion (60 - top of Figure 3) and a an inner portion (60 - second element from the top of Figure 3) whereby the outer and inner portions (60) are substantially parallel to each other and the outer portion (6) has a first and a second slot (in between elements 68); a second U-shaped member (54) having an outer portion (62) and an inner portion (62) having a slot (in between elements 70) whereby the outer and inner portions are substantially parallel to each other; and a pegboard (22) integrated (i.e., once assembled) to the inner portions (60, 62) of the members (52, 54).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Insomuch as the claim are best understood (in view of the rejections under 35 USC § 112, 2nd paragraph, as advanced above), claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shea '978, alone.

Shea '978 discloses the apparatus as advanced above and further comprising first and second gaps (in between 65 is a first gap and in between 66 is a second gap) which are defined on the U-shaped members (52, 54, respectively); and a wire fixture comprised of a plurality of U-shaped brackets (see Figure 4) whereby each bracket has a first, second and third portion with

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the first and third portions substantially parallel to each other and the second portion substantially perpendicular to the first and third portions.

The claim differs from Shea '978 in requiring that the first and third portions of the U-shaped brackets *can* fit within the gaps of the members.

Although Shea '978 does not show the portions of the wire fixture "fitting" within the gaps of the members, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the elements could "fit" together, in such a way as called for in the claims (and as best understood in view of the Section 112 rejections), thereby increasing use capabilities.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

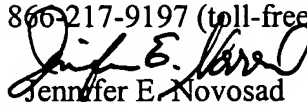
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Jennifer E. Novosad", is written over the printed name.

Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
January 3, 2005